

**MINUTES OF THE MEETING OF  
THE PARTNERSHIPS AND LIMITED LIABILITY COMPANIES COMMITTEE  
OF THE BUSINESS LAW SECTION OF THE CALIFORNIA STATE BAR**

**June 12, 2008**

Eric Sternberger, Chair of the Committee, called the meeting to order at approximately 10:00 a.m. Members present by telephone were Charles McKee, Vice Chair, Ron Wargo, Secretary, David Riley, Ben Kwon, Donald Scotten, Jonathan Watts, Endy Uhoka-Ajike, Jessica Karner, Phil Jelsma, Jack Johal, and Brad Rogerson. Corporations Committee liaison Sharon Flannigan and Executive Committee liaison Allan Duboff were also in attendance.

**I. Administrative Matters**

A. Minutes. The Members reviewed and approved the Minutes for the May 8, 2008 meeting.

B. Officer Appointments. The Membership recognized the appointment of Charles McKee as Chair for the 2008-2009 year. Phil Jelsma and Ron Wargo will be Co Vice-Chairs for next year. The Secretary position is open for nominees.

C. Membership. Eric Sternberger welcomed Jack Johal and Brad Rogerson back to the Committee.

D. State Bar Annual Meeting in Monterey – September 25-28

1. PLLC Meeting Thursday 9/25/2008 1:30pm-3:00pm, Portola Hotel, Cottonwood I & II – Although the meeting is scheduled to be face-to-face, mandatory attendance is not required. Telephone call-in information will be provided.

2. Re-RULPA Has Arrived – Program (Friday 9/26/2008, 8:30am-9:30am Portola Hotel, Pavilion Tent) – Presenter – Phil Jelsma.

3. Business Law Breakfast – Friday 9/26/2008, 8:00am-9:00am. – There is a conflict between Phil's presentation and the Business Law Breakfast.

E. RE-RULPA Webinar. Phil Jelsma's Webinar is scheduled for July 10, 2008, one hour before the Committee meeting. Eric Sternberger mentioned that the constituency was interested in an LLC/Partnership Tax Webinar, and that he would be looking for volunteers to lead that discussion.

F. BLS Committee Liaisons.

1. Executive Committee Liaison Allan Duboff had nothing to report.

2. Legislative Liaison Phil Jelsma discussed A.B. 1895 codifying the exemption for sales taxes collected by an LLC, setting an 8 year statute of limitations.

He also discussed S.B. 1225, which would add cemetery ownership as a permitted professional LLC.

3. Corporations Committee Liaison Sharon Flannigan discussed a Federal bill requiring reports of beneficial owners of corporations and LLCs, both at formation and annually. This federal legislation may require each business entity to obtain a passport from any foreign investors.

## **II. Subcommittee Reports**

A. Publications Subcommittee. John Spomer was not at the meeting. Eric Sternberger decided to hold back on publications in light of the LP Guide.

B. Guide to Limited Partnerships. Eric Sternberger provided new guidelines for the format for the Guide and reminded everyone to work on their chapter.

C. Webpage Subcommittee. Webpage Subcommittee chair Ron Wargo mentioned that all members had been updated.

## **III. Developments**

David Riley discussed several developments.

The first arose out of a Utah Case, *Duke v. Graham*, 158 P.2d 540 (Utah). In the *Duke* case, an arbitrator removed the managing members as members and managers of an LLC and the removed members appealed. The Court found that under Utah LLC law and the Utah Arbitration Act, an arbitrator may remove members, and the parties had agreed to apply Utah law when agreeing to arbitration.

The second case, *Montgomery v. Treppie Technologies*, 2008 Westlaw 1826808, discussed fiduciary duties between partners, particularly in light of an “unspoken” exemption to limited liability for lawsuits between partners when allegations of breach of fiduciary duty have occurred.

Similarly, the court in *Ederer v. Gursky*, 9 N.Y.3d 514, held that there is not a limited liability shield for partners in an LLP when they allege breach of fiduciary duty towards one another.

Finally, it was mentioned that the Nonprofit Committee (and the Committee’s Phil Jelsma) would be participating in a Franchise Tax Board hearing on Thursday, June 17, 2008 at 1:30 pm regarding A.B. 198 and out-of-state LLC fees.

## **IV. Practice Issues**

There Committee did not discuss any practice issues.

There being no further business to come before the Committee, the Chair declared the meeting adjourned at approximately 10:29 a.m.